IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 7771 OF 2007

Indian Oil Corporation Limited.... Petitioner

versus

Shri Subhash K. Janaagale & aanr..... Respondent.

Mr. P.K.Dhakephalkar Sr. adv. i/b M/s. Goenka Law Associates for the petitioner.
Shri U.p.Warunjikar for respondent no.1.

CORAM; A.P. DESHPANDE, J.
DATED; 19TH OCTOBER, 2007

P.C.;

1. The Indian Oil Corporation is the petitioner who takes an exception to an order passed by the Civil Judge, Senior Division, Baramati dated 6-10-2007 which goes to allow the application filed at Exh.5 by the Plaintiff/respondent and an application filed at Exh.23 by the present petitioner for referring the dispute to Arbitrator, having regard to the stipulation in the dealership agreement. What is really under challenge is the order passed below Exh.5 granting a mandatory injunction in favour of the plaintiff/respondent by directing the petitioner to break open the seal of the petrol pump within four days from the date of the order. The said order further directs that failure to break open the seal

within the stipulated period would enable the plaintiff to open the seal and sell the diesel and petrol subject to adhering the norms of the defendant no.2. A further direction has been issued not to cancel the retail outlet dealership licence of the plaintiff. It is also relevant to note that by the same order, the dispute has been referred to the Director, Marketing of the Corporation under section 8 of the Arbitration & Conciliation Act. 2. The learned Senior advocate appearing for the petitioner has pointed out that for the purpose of section 9, the court means the Principal Civil Court of original jurisdiction in a district. The definition of 'court', finding place in section 2(e) of the Arbitration and Conciliation Act 1996 makes it amply clear that the court does not include any civil court of a grade inferior to such Principal Civil Court. In this view of the matter, it is contended that the impugned order granting mandatory injunction for breaking open the seal is without jurisdiction. At this stage the learned senior counsel appearing for the petitioner also makes a statement that this court may order the parties to maintain statusquo in regard to cancellation of dealership licence of the respondent. The learned counsel for the respondent proposes to move an application under section 9 of the Arbitration and Conciliation Act before the Principal

Civil Court of original jurisdiction in the district of Baramati for seeking appropriate relief under section 9 and submits that till the said court passes appropriate orders on the application, which the respondent proposes to file under section 9 of the Act, the statusquo in regard to dealership licence be maintained.

3. As both the parties are in agreement that the impugned order of injunction be set aside and the petitioner shall not cancel the dealership licence till appropriate orders are passed by the court under section 9 of the Act. The petition stands disposed of by permitting the respondent to file appropriate application under section 9 of the Act before the court at Baramati. The learned counsel for the respondent, on instructions, undertakes to file the application within two weeks from today. The Court at Baramati shall pass appropriate orders on the application to be moved by the respondent as expeditiously as possible. The petitioner's statement that the petitioner will not cancel the dealership licence of the respondent till passing of the order by the court at Baramati, is accepted. The order to the extent it directs the present petitioner to break open the seal by granting mandatory injunction is quashed and set aside. However the rest of the order is

maintained as it is. The District Court to decide the application to be filed by the respondent under section 9 of the Act in accordance with the law and on its own merit. Writ Petition is thus disposed of.

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